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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,428	10/11/2001	Benny B. Johansen	RXSD 1017-1	9076

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EXAMINER

FOREMAN, JONATHAN M

ART UNIT PAPER NUMBER

3736

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/975,428

Applicant(s)

JOHANSEN ET AL.

Examiner

Jonathan ML Foreman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 12, 13, 14, 21, 22 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,428,485 to Rho.

In regards to claims 1, 2, 12, 13, 14, 21, 22 and 27, Rho discloses a method of testing the hearing of a user utilizing a computer system including downloading a computer program from a server to a computer via the Internet (Col. 3, lines 58 – 66), the program including instructions which store a volume control setting of the system and apply a predefined volume control setting in the computer system automatically (Col. 7, lines 51 – 54); executing the program on the computer, the execution of the program storing the volume control setting of the system; and applying the predefined volume control; generating a stimulus under control of the computer system (Col. 4, lines 46 – 47); receiving an input from the user that indicates whether or not the user heard the stimulus (Col. 4, lines 47 – 48; Col. 5, line 11 – 15); and resetting the volume control to the stored volume control setting of the system (Col. 5, lines 31 – 41). Rho discloses sending first data to the server (Col. 5, line 25 – 43); qualifying the hearing of the user (Col. 5, lines 43 – 43); and sending second data to the computer (Col. 5, line 46 – 47). Rho discloses the above mentioned instructions being contained in a program storage device (Col. 2, lines 37 – 39).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 - 11, 15 - 20, 23 - 26 and 28 - 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,428,485 to Rho in view of admitted prior art (Admission).

In regards to claims 3 and 15, Rho discloses transferring a computer program over the Internet (Col. 1, lines 13 - 20), but fails to disclose transferring the computer program via email. However, Applicant has admitted that transferring a computer program over the Internet is well known (Page 6, lines 7 - 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to transfer the program as disclosed by Rho via email as taught by Admission in order to easily distribute the program.

5. In regards to claims 4 - 11, 14 - 20, 23 - 26 and 28 - 32, Rho discloses the importance of controlling a user's computer and its sound during a hearing test (Col. 3, lines 5 - 9; Col. 5, lines 37 - 41; Col. 7, lines 3 - 6), Rho does not disclose the detail of controlling sound. Admission discloses the details of controlling sound. In particular the channel balance and volume of an audio source, such as a wave file, are taught (Figure 1; Page 2, line 15 - Page 3, line 13). It would have been obvious to one of ordinary skill in the art at the time the invention was made for the method and computer program of Rho to use the details of controlling sound, as taught by Admission, to establish a standard for the user's system.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (703) 305-5390. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mary Beth Jones can be reached on (703) 308-3400. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



JMLF

July 21, 2004


MARY BETH JONES
ACTING SUPERVISORY PATENT EXAMINER